

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

DERRICK LEUTILIO BERETERVIDE,
Petitioner,

v.

Civil No. 3:22cv315(DJN)

NORFOLK GENERAL DISTRICT COURT,
Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia inmate proceeding *pro se*, brings this petition pursuant to 28 U.S.C. § 2254 (“§ 2254 Petition”) (ECF No. 1)). Before a state prisoner can bring a § 2254 petition in federal district court, the prisoner must first have “exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). On August 25, 2022, the Magistrate Judge issued a Report and Recommendation, wherein he recommended dismissing the action for lack of exhaustion. (ECF No. 9) The Court advised Petitioner that he could file objections within fourteen (14) days of the date of entry of the Report and Recommendation. Petitioner has not responded.

“The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court.” *Estrada v. Witkowski*, 816 F. Supp. 408, 410 (D.S.C. 1993) (citing *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). This Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “The filing of objections to a magistrate’s report enables the district judge to focus attention on those issues — factual and legal — that are at the heart of the parties’

dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985). In the absence of a specific written objection, this Court may adopt a magistrate judge’s recommendation without conducting a de novo review. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (“In the absence of ‘specific written objections,’ the district court was free to adopt the magistrate’s recommendation on the retaliation claim without conducting a de novo review, and [the plaintiff] waived her right to an appeal on that claim.”) (cleaned up).

Plaintiff having not objected, and the Court having determined that the Report and Recommendation is correct on its merits, the Court will ACCEPT and ADOPT the Report and Recommendation (ECF No. 9). The Court will DISMISS WITHOUT PREJUDICE this action. A certificate of appealability will be DENIED.

An appropriate Order shall issue.

Let the Clerk file a copy of the Memorandum Opinion electronically and send a copy to Petitioner.

/s/



David J. Novak
United States District Judge

Richmond, Virginia
Dated: September 27, 2022